



## **Midwest Environmental Advocates, Inc. Freedom of Information Act Records Request and Fee Waiver**

### **Records Request Description:**

In accordance with 5 U.S.C. § 552, Midwest Environmental Advocates ("MEA") requests a copy of the State of Florida's June 24, 2019 comment letter on the Miccosukee Tribe of Indians of Florida's supplemental application for treatment in a manner similar to a state ("TAS") for its Clean Water Act Sections 303(c) and 401 programs for several parcels of trust land, as well as any documents provided to the State of Florida by EPA which triggered the State's June 24, 2019 comment letter or upon which the State's letter was commenting, and any response to the State's June 24, 2019 comment letter from EPA or the Miccosukee Tribe.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the government bears the burden of substantiating why information may not be released under FOIA's limited exemptions. Pursuant to the holding of *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973), please include a detailed ledger including:

1. Basic factual material about each withheld communication, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific statutory exemption(s) under which the communication (or portion thereof) was withheld, a full explanation of how each exemption applies to the withheld communication, and any interest(s) that would be harmed by release. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested record. See 5 U.S.C. § 552(b). If your position is that a document contains exempt segments that are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. See *Mead Data Cent. v. Dep't of Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**Fee Waiver Request:**

The subject of this request concerns EPA information and records that will help illuminate how the Treatment as a State process plays out in practice, which is of interest to MEA and several Tribes in Wisconsin with whom we communicate. Relying on MEA staff's legal, policy, and technical expertise, MEA will distill the contents of the records and provide relevant information to the public, in accordance with MEA's mission. MEA works for healthy land, air, water, and government. Notably, a healthy environment and government is premised on open and complete access to public records. To this end, MEA maintains an open dialogue with members of the public through social media, publications, and outreach events. Moreover, MEA provides technical resources, input and comment opportunities, and environmental news through our website, newsletter, blog, and e-mail alerts. MEA catalogs all public records requests on its website to ensure complete transparency. In all of its outreach, MEA provides pertinent information and resources or redirects interested members of the public to partners who can provide more insight. In sum, MEA is best situated to collect, distill, and communicate this information.

The requested records will inform Tribes' and the public's understanding of how the Treatment as a State process unfolds for Tribes seeking TAS status for lands that are held in trust by the federal government.

**Factor One** – The subject of the request concerns identifiable operations and activities of the federal government:

The subject of this request concerns EPA records regarding the State of Florida's comments to Miccosukee Tribe's second supplemental TAS application. EPA is statutorily authorized to implement the Clean Water Act ("CWA"). This authority requires EPA to communicate with appropriate state and local agencies when a TAS application is submitted in accordance with EPA's "Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs." The subject of this request stems from the EPA's notification of state and local agencies regarding the Miccosukee Tribe's second supplemental TAS application. The requested records thus directly concern "the operations or activities of the government." 40 C.F.R. § 2.107(l)(2)(i).

**Factor Two** – The disclosure is "likely to contribute" to an understanding of government operations or activities:

There is particular interest in understanding how governmental agencies are enforcing environmental regulations and maintaining an emphasis on clean air, water, land, and government. As a non-profit environmental law center, MEA prioritizes educating and empowering members of the public and our Tribal partners, and works to defend public rights, protect natural resources, and ensure transparency and accountability in government. See <https://midwestadvocates.org/about/our-work>. MEA works for a clean, open, and honest government, and clean and open government depends on public access to government records.

See <https://midwestadvocates.org/issues-actions/issues/detail/government>. These records will increase the public's and Tribes' understanding of the TAS process and how the federal government reviews TAS applications for Tribes with multiple trust land bases.

**Factor Three** - The contribution to an understanding of the subject by the public is likely to result from disclosure:

The disclosure of the requested records will contribute to the understanding of Tribes in Wisconsin and communities interested in a healthy environment and open government. Importantly, MEA has the intent, expertise, and means to distill and disseminate the requested information to the public. Measuring the contribution to public understanding turns on "the degree to which 'understanding' of government activities will be advanced by seeing the information; and the extent of the 'public' that the information is likely to reach." *Cause of Action v. FTC*, 799 F.3d 1108, 1116 (D.C. Cir. 2015). "FOIA does not require [however] that a requester be able to reach a 'wide audience,'" just a "reasonably broad audience of persons interested in the subject." *Id*; see *Prison Legal News v. Lappin*, 436 F.Supp.2d 17, 26–27 (D.D.C. 2006).

MEA is an organization that has considerable legal, policy, and technical expertise working to protect natural resources over its 20-year history. MEA is interested in helping Tribes in Wisconsin better understand the TAS process so Tribes can administer their own Clean Water Act programs. MEA is committed to leveraging its expertise to strengthen environmental controls and advance enforcement of existing law governing the protection of public health.

As part of MEA's mission to uphold clean and open government, the information received from the requested records will be provided to interested individuals, partner organizations, and the general public through press releases, public presentations, media engagement, and less formal social media outreach. It will also be distilled and integrated into public guides focused on Tribal environmental rights which MEA plans to produce and publicly disseminate. MEA will analyze and distill the information as necessary to make it more accessible to the public through these multiple methods of dissemination.

MEA has a demonstrated history of making information obtained from requested records available to the public. In 2018, MEA requested all records between the City of Milwaukee, WI and/or Milwaukee Water Works and the Environmental Protection Agency EPA regarding lead services lines or lead levels in drinking water. The previous year, MEA requested all records, including communications between USACE, Meteor Timber, LLC., and the U.S. Fish & Wildlife Service. All records obtained from these records requests are available to the public through the Google search function on our website. See <http://midwestadvocates.org/opengovernment>. In sum, MEA has historically served as a central resource for members of the public to learn about key environmental issues arising out of records requests.

**Factor Four** - The significance of the contribution to public understanding:

By making these records accessible to interested members of the public, including Tribes in Wisconsin, MEA furthers the public's understanding of the operations of the federal government which is the primary goal of the FOIA. *Monroe-Bey v. F.B.I.*, 890 F. Supp. 2d 92, 97 (D.D.C. 2012).

Several Tribes in Wisconsin that MEA frequently works with have expressed interest in seeking TAS status so that they can administer Clean Water Act programs on their reservation lands. Understanding how the TAS process unfolds for noncontiguous tribal trust lands is paramount not only for Tribes in Wisconsin, but also for the surrounding local governments and landowners so that all parties can work together towards building the healthiest environment and community.

**Factor Five** - The existence and magnitude of a commercial interest:

As a non-profit, non-partisan organization, MEA clearly has no commercial interest in the records requested herein. Even so, recent federal court decisions have indicated that having a commercial interest does not preclude a fee waiver. Notably, the D.C. Circuit Court in 2015 stated, "since the 1986 amendments, it no longer matters whether the information will also (or even primarily) benefit the requester. Nor does it matter whether the requester made the request for the purpose of benefitting itself. The statutory criterion focuses only on the likely effect of the information disclosure." *Cause of Action*, 799 F.3d at 1118.

MEA has a public interest mission to ensure clean water, air, land, and government for this generation and the next. The ultimate effect of disclosing the requested records to MEA will be to better inform interested members of the public about the process of gaining TAS status for Tribes, which in turn, allows Tribes to administer their own Clean Water Act programs and promote healthy environments.

**Factor Six** - The primary interest in disclosure:

MEA has a primary interest in collecting the State of Florida's June 24, 2019 comment letter on the Miccosukee Tribe's second supplemental TAS application, and the other records requested preceding and following that letter, as an informational resource to the public, which MEA will accomplish through numerous channels. For example, MEA maintains a page on its website to post responses to record requests such as this FOIA request to the EPA. See <https://midwestadvocates.org/opengovernment>. MEA also regularly posts on Facebook, our website, and sends out email alerts to inform the public about opportunities for public comment. Finally, MEA fields intakes and informational requests from members of the public and interested media members. Throughout all of these forms of disclosure, MEA seeks to provide unbiased summaries of pertinent environmental data and issues.